



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HUMAN RESOURCES MANAGEMENT DIVISION-LAS VEGAS
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May 31, 2013

OFFICE OF
ADMINISTRATION AND
RESOURCES MANAGEMENT-CINCINNATI

Randolph L. Bodwin
2970 E. Lake Lansing Road
East Lansing, MI 48823

RE: Freedom of Information Act Request No. EPA-HQ-2013-005207

Dear Mr. Bodwin:

This letter is in response to your request for the contents of "the complete personnel file from 1990-present, including, but not necessarily limited to: application for employment, employment termination documents, records of hours worked, W-2s, records of discipline/evaluation, correspondence, sick/accident/vacation leave utilization records, and any other information whatsoever that is contained in her employment file" for Yvonne Charice Christopher, an EPA employee. That request was initially submitted as a subpoena duces tecum received by the US EPA, Office of Administration and Resources Management, Human Resources Shared Service Center, Las Vegas, Nevada on March 25, 2013. In response, you were notified by letter dated April 5, 2013 from Scott Albright, U.S. EPA Office of General Counsel, Information Law Practice Group, that under the Environmental Protection Agency (EPA) regulations at 40 C.F.R. Part 2, Subpart C, Section 2.405, your request for records would be provided or denied in accordance with subparts A and B of 40 C.F.R., Part 2, i.e., the Agency's Freedom of Information Act (FOIA) regulations.

Following issuance of the aforementioned notification, you were contacted telephonically on May 15, 2013 by Cindy Kirchmer. Ms. Kirchmer contacted you to obtain clarification of your FOIA request, because the types of records you requested as part of Ms. Christopher's "personnel file" are subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended. Therefore, much of the information you receive would be redacted. Furthermore, information such as "records of hours worked", "W-2s", "records of discipline/evaluation", "correspondence", and "leave utilization records" are not maintained in an employee's "personnel file" per se; however, those types of records are still covered by various Privacy Act Systems of Records--whether developed by OPM and applicable government-wide or developed by the EPA and applicable only to the EPA.

In response to Ms. Kirchmer's inquiry, you advised that you did not wish to further clarify your request. Rather, you informed Ms. Kirchmer that you are seeking records responsive to the aforementioned FOIA which are actually contained within the official personnel file maintained by the Agency for Ms. Christopher.

Under the Privacy Act, the EPA is prohibited from disclosing information from records maintained in a System of Records for any person, except with the written consent of the individual to whom the records pertain. However, there are twelve exceptions to the Privacy Act which permit disclosure without the consent of the individual. One of those exceptions pertains to disclosures that **are required** by the FOIA

under a written FOIA request. But when the FOIA does not require a disclosure, but merely permits disclosure at an Agency's discretion, the disclosure prohibition of the Privacy Act is applicable and discretionary release is prohibited. Furthermore, the EPA's regulations prohibit the discretionary disclosure of Exemption 6 information.

An EPA employee's official personnel file is covered by an Office of Personnel Management (OPM) government-wide Privacy Act System of Records, OPM/GOVT-1. However, under OPM regulations at 5 C.F.R. Part 293, Subpart C, Section 293.311, certain information pertaining to federal employees is considered public information. That "public information" encompasses federal salaries (past and present), amounts of awards and within grade increases, position descriptions and job standards, employment and education data related to the qualifications for federal employment or promotion, and approved promotions and awards, including employee grade and step increases.

Conversely, under Exemption 6 of the FOIA, Personal Privacy, personal information may be protected from disclosure. Exemption 6 permits the withholding of all information about individuals in "personnel . . . files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 6, the information at issue does not have to be of a highly sensitive or intimate nature. The privacy issue at stake is an individual's reasonable expectation of privacy and control over the dissemination of personal information about him or herself. That privacy interest also includes the right to be free from any secondary effects of disclosure, such as embarrassment or unwanted intrusion, even if the information itself is not inherently harmful.

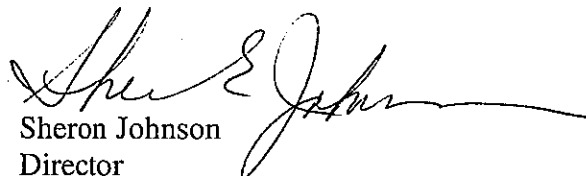
In applying Exemption 6, it is necessary to conduct a balancing test between the public's interest in the requested information and the privacy rights of the affected employee. The public interest pertains to whether the disclosure of that information sheds any light on the operations or activities of the government, i.e., the interest of the general public in "knowing what its Government is doing". Because the matter at issue is private litigation unassociated with the US EPA, no public interest is served by releasing non-redacted versions of the redacted documents that has been provided. Therefore, the records that are contained in Ms. Christopher's official personnel file have been provided as an enclosure to this letter. However, they are being provided with redactions to withhold all information not otherwise required to be released under the aforementioned OPM regulation, i.e., social security number, date of birth, employment and education data not related to qualifications for federal employment, college grades, life/health/charity/thrift savings options and withholding data, etc.

Under the FOIA, you have the right to appeal this decision to the National Freedom of Information Officer. The mailing address to file an appeal is: United States Environmental Protection Agency, Office of Environmental Information, Records, Privacy and FOI Branch (2822T), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. If you file an appeal and use a delivery service other than the USPS, the address for courier or hand delivery is: National Freedom of Information Act Officer, United States Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 6416 West, Washington, D.C. 20004. An appeal may also be filed by email to hq.foia@epa.gov.

Regardless, your appeal must be in writing and received within 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-day limit. Your appeal should reference EPA-HQ-2013-005207. Finally, if you file the appeal by US mail or use a commercial delivery service, include an annotation on the envelope stating "Freedom of Information Act Appeal".

If you have any questions concerning the documentation which has been provided, please contact Lizabeth Engebretson, Chief, Headquarters Operations Branch, at (702) 798-2432. Please provide your FOIA request number in all communications.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheron Johnson", with a long horizontal flourish extending to the right.

Sheron Johnson
Director

Enclosures

